

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION  
Before the Commissioner of Financial and Insurance Regulation

In the matter of

Jason Gatt,  
Petitioner

v

Office of Financial and Insurance Regulation  
Respondent

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Case No. 11-819-L  
Docket No. 2011-813

Issued and entered  
this 8<sup>th</sup> day of November 2011  
by R. Kevin Clinton  
Commissioner

**FINAL DECISION**

**I. BACKGROUND**

This matter concerns the application of Jason Gatt (Petitioner) for a resident insurance producer license. Petitioner filed his application with the Office of Financial and Insurance Regulation (OFIR) in December 2010. On the application, Petitioner failed to disclose that he had two misdemeanor convictions, one in 1999 for possession of marijuana and one in 2003 for disturbing the peace. During the pre-licensing review the convictions were discovered. The license application was denied under MCL 500.1239(1)(a) based on Petitioner's failure to disclose the convictions.

Petitioner challenged the denial and a hearing was held on July 13, 2011. On September 7, 2011, the presiding administrative law judge issued a Proposal for Decision (PFD) recommending that the Commissioner uphold the denial. In a letter dated September 27, 2011, the Petitioner stated his desire to appeal that recommendation.

**II. ISSUE**

Did the Petitioner enter on his insurance producer license application "incorrect, misleading, incomplete, or materially untrue information" which would require the denial of the license?

### III. APPLICABLE LAW

Resolution of this case requires the application of section 1239(1) of the Insurance Code, MCL 500.1239(1), which is reprinted below (the portion in italics was cited by OFIR staff in denying the Petitioner's license):

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and *the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:*

(a) *Providing incorrect, misleading, incomplete, or materially untrue information in the license application.*

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony.

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance license.

(l) Knowingly accepting insurance business from an individual who is not licensed.

(m) Failing to comply with an administrative or court order imposing a child support obligation.

(n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing payment of the single business tax or the Michigan business tax.

#### IV. FINDINGS OF FACT

In the PFD, the administrative law judge made eight numbered findings of fact. (PFD, pp. 11-13) Findings of Fact 1 through 6 and a portion of Finding of Fact 7 in the PFD are adopted and made a part of this Final Order. The remaining findings of fact are not adopted. The adopted findings of fact appear below.

1. In November 1999, in the 2A Judicial District Court of Michigan, Petitioner was convicted by guilty plea of the misdemeanor "Controlled Substance Possession of Marijuana." Petitioner was sentenced to jail, 24 months of probation, a \$100.00 fine, and costs.
2. In May 2003, in the 2A Judicial District Court of Michigan, Petitioner was convicted by guilty plea of the misdemeanor "Disorderly Person - Disturbing the Peace." Petitioner was sentenced to jail, 24 months of probation, a \$100.00 fine, and costs.
3. On December 2, 2010, Petitioner submitted to the Office of Financial and Insurance Regulation an online application for an Individual Producer License/Registration.
4. On the submitted application, Petitioner answered "No" to Question #1, "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" The application form included the following clarification regarding what types of crimes were to be disclosed:

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (OUI) or driving while intoxicated (OWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

5. By letter dated January 3, 2011, the Office of Financial and Insurance Regulation requested that Petitioner verify information regarding Petitioner's possible criminal history regarding convictions in 2001 and 2003.
6. In subsequent correspondence to OFIR, Petitioner indicated that he thought the application question pertained to felonies only.
7. Petitioner credibly testified that he did not intend to mislead the Office of Financial and Insurance Regulation in completing the online application for licensure.

#### V. CONCLUSION OF LAW

The PFD reaches a single conclusion of law: that the OFIR staff established by a preponderance of evidence that the Petitioner did provide incorrect, incomplete or materially untrue information as those terms are used in section 1239(1)(a) and, for that reason, Petitioner should not be granted an insurance producer license.

Based on the analysis below, the Commissioner declines to adopt this conclusion of law.

Section 1239(1) of the Insurance Code, reprinted above, enumerates the conduct which may be cited in denying an insurance producer license. Section 1239(1) includes certain conduct which requires license denial without regard to motivation or intent of the applicant. Under the statute, the existence of a felony conviction, a license revocation in another state, failure to pay child support or business taxes all require license denial without consideration of the reasons why that conduct occurred. Subsections (f), (i), (m), and (n), respectively.

In contrast, other grounds for license denial are based on the motivation or state of mind of the applicant at the time the conduct occurred. These causes for denial use terms such as "improperly withholding" money or property; "intentionally misrepresenting" the terms of an insurance contract; "using fraudulent, coercive or dishonest practices" in the conduct of business; "improperly using notes" in a licensing examination; "knowingly accepting insurance business" from an unlicensed individual. Subsections (d), (e), (h), (k), and (l), respectively. The Commissioner must determine how the language of section 1239(1)(a) should be applied to the Petitioner's circumstances.

In carrying out that analysis, the courts have provided a framework. "Statutes relative to insurance will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice, to favor public convenience and to oppose all prejudice to public interests. The statute is to be given a reasonable construction looking to its purpose and

the object it seeks to accomplish.” *Allen v Michigan Property & Casualty Guarantee Association*, 129 Mich App 271, 274 (1983).

“[W]ords in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole.” *Gen Motors Corp v Erves (On Rehearing)*, 399 Mich 241, 255; 249 NW2d 41 (1976)(opinion by COLEMAN, J.). Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. *McCarthy v Bronson*, 500 US 136, 139; 111 S Ct 1737; 114 L Ed 2d 194 (1991); *Hagen v Dep’t of Ed*, 431 Mich 118, 130-131; 427 NW2d 879 (1988). “In seeking meaning, words and clauses will not be divorced from those which precede and those which follow.” *People v Vasquez*, 465 Mich 83, 89; 631 NW2d 711 (2001), quoting *Sanchick v State Bd of Optometry*, 342 Mich 555, 559; 70 NW2d 757 (1955). “It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.” *Third Nat’l Bank in Nashville v Impac Ltd, Inc*, 432 US 312, 322; 97 S Ct 2307; 53 L Ed 2d 368 (1977); see also *Beecham v United States*, 511 US 368, 371; 114 S Ct 1669; 128 L Ed 2d 383.

The purpose of a license application is to provide the licensing authority with the information needed to determine whether an applicant meets the licensing standards established by law. An individual who subverts the licensing process by concealing disqualifying information will be denied that license. Mistaken or inadvertent omission of information requested should not, by itself, automatically result in license denial.

The present case focuses on whether the Petitioner provided “incorrect, misleading, incomplete, or materially untrue information in the license application.” At first glance, it may appear that this subsection describes disqualifying conduct which does not require consideration of motive. Either the information provided is correct, complete and accurate, or it is not. However, it is easy to envision circumstances under which information may be inaccurate, incomplete, and even, perhaps misleading but which should nevertheless not disqualify an individual from receiving a license. Misspelling a name or entering a date incorrectly are examples of inaccuracies which appear to fall within the scope of subsection (a) but which cannot fairly be considered disqualifying. If the errors are committed without the *intent* to mislead, they are simple errors which can be corrected. In contrast, the same inaccuracies might properly be seen as disqualifying if it is demonstrated that the inaccuracy was entered on the application for the purpose of concealing disqualifying information. Context is crucial in determining whether a license should be denied pursuant to subsection (a).

Section 1239(1)(a) is not concerned with inadvertent errors, typographical mistakes and inconsequential inaccuracies. In assessing licensing applications, OFIR staff has focused on whether the error, inaccuracy or mistake appears to have been inadvertent or if it were instead

employed as a means to enhance the applicant's chance of licensure by misleading the agency. Applicants who, by their false statements, attempt to mislead the agency, can be expected to similarly mislead the public when self-interest is at stake. Inadvertent errors, by comparison, do not suggest an applicant presents a similar risk.

An insurance producer license is a privilege granted to those who demonstrate an honest and trustworthy character. The OFIR licensing staff is properly vigilant in their scrutiny of applicants. Where an applicant has not disclosed prior convictions in accordance with the online application instructions, it raises legitimate questions regarding the applicant's ability to carry out the responsibilities of an insurance producer in a trustworthy manner.

In order to determine whether an omission should result in license denial, the licensing statute provides for a hearing process in which an applicant, confronted by such an omission, has the opportunity to present evidence showing that the omission did not constitute an attempt to mislead the licensing authority.

In the instant case, the ALJ made the following finding: "Petitioner credibly testified that he did not intend to mislead the Office of Financial and Insurance Regulation in completing the online application for licensure." PFD at 13.

In light of the specific finding by the ALJ that there was no intent to mislead, Petitioner's failure to disclose his two misdemeanors does not require the denial of a license.

Section 1239(1)(a) also prohibits licensure to those who have included "materially untrue" information in the application. The ALJ did not make a specific finding that the Petitioner's omission was materially untrue. The ALJ simply concluded (PFD at 14):

Respondent has shown by a preponderance of evidence in the record that in submitting his online license application to Respondent on December 20, 2010, Petitioner provided "incorrect," "incomplete" or "materially untrue" information within the meaning of Section 1239(1)(a), which precludes his licensure at this time under Section 1205(1)(b) of the Insurance Code. [Emphasis added.]

The phrase "materially untrue" implies that an applicant has provided information which is untrue in a way that is important to the licensing decision. The phrase refers to an affirmative statement which is untrue and which the applicant knows is untrue. His answer, as discussed above, was not done with the intent to deceive, and intent to deceive is an element which must be present in order to find that section 1239(1)(a) has been violated. The Commissioner finds the failure to disclose the misdemeanors occurred as a consequence of the Petitioner's misunderstanding of what the application required him to disclose.

Having determined that the Petitioner should not be precluded from receiving a license because he failed to disclose the misdemeanor convictions, it remains to determine whether those convictions should, themselves, require that the license be denied.

The two convictions occurred ten and eight years ago. No information has been presented which indicates that the Petitioner has had any subsequent encounters with the courts. The convictions themselves do not demonstrate a lack of honesty on the part of the Petitioner. Certainly, they are evidence of poor judgment and lack of restraint. Such conduct, while regrettable, does not require denial of the requested producer license, particularly when the events in question occurred well in the past.

The Commissioner finds that Petitioner is not precluded from receiving an insurance producer license on the basis of the information disclosed in the application and the information subsequently discovered by OFIR licensing staff.

#### VI. ORDER

It is ordered that:

1. The refusal to issue an insurance producer license to Petitioner Jason Gatt is reversed.
2. The Petitioner may submit a new application for an insurance producer license to ensure that the information he submits is both accurate and current.
3. The Petitioner is not required to re-take the licensing examination.
4. OFIR licensing staff shall review the Petitioner's application in light of the standards articulated above.



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R. Kevin Clinton  
Commissioner